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Bail Slip

That the Appellants 1 to 4/accused Nos.1 to 4 namely Doss @ Karthikeyan, Muniyandi Nadar, Selvam & Latha @ Pushpalatha were directed to be released on bail in and by the order of this Court dt. 15.03.99 in crl.M.P.No.572/99 in Crl.A.No.49/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2005

Coram

The Honourable Mr.Justice N.DHINAKAR
and
The Honourable Mr.Justice M.CHOCKALINGAM

Crl.A.No.49 of 1999

1.Doss @ Karthikeyan
2.Muniyandi Nadar
3.Selvam
4.Latha @ Pushpalatha ...Appellants

-vs-

State, rep. by
the Inspector of Police
Keevalur Police Station
Thiruvarur District. ...Respondent
(Cr.No.182/96)

Criminal Appeal against the order of conviction and sentence made in S.C.No.40 of 1998 on the file of the Additional Sessions Judge, Nagapattinam dated 22.10.1998 in convicting the appellants 1 to 4 to undergo life imprisonment for offence under section 302 readwith 34 IPC and the first appellant to undergo 6 months RI for offence under section 324 IPC, the life imprisonment and 6 months RI, awarded to the first appellant to run concurrently.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.S.Jayakumar,
Additional Public Prosecutor

JUDGMENT

[The Judgment of the Court was delivered by
M.CHOCKALINGAM,J]

Aggrieved over the judgment of the Additional Sessions Court, Nagapattinam, made in SC.No.40/98 wherein the appellants stood charged, tried and found guilty for an offence under section 302

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read with 34 IPC and sentenced to undergo life imprisonment, and the first appellant/A1 alone stood found guilty for an offence under section 324 IPC and sentenced to undergo six months rigorous imprisonment, the appellants have brought forth this appeal. The imprisonment for life and the rigorous imprisonment for six months imposed on the accused No.1 is ordered to be run concurrently.

2. The facts that are necessary for the disposal of this appeal can be stated thus:-

(a) The accused/appellants and the deceased one Ramalingam were natives of Semangalam village. The deceased was cultivating six silk cotton trees for which there was a quarrel and dispute between the parties. P.W.1 is the daughter of the deceased. Due to enmity that arose on the cultivation of those trees, on 27.3.1996 at about 9.30 a.m. A1 to A4 came to the house of the deceased. At that time, A1 pulled down a thatched shed in front of his house and took a bamboo stick M.O.1, while A2 took kattamani stick and A3 and A4 also took bamboo sticks, and they attacked the deceased. In that course, P.W.1 interfered, and she was also attacked. P.W.1 took her father to Annai Hospital, Thevur, through a bullock cart brought by P.W.3, Duraisamy, and there, he was declared dead by the doctor. Then she went to P.W.2 the Village Administrative Officer, at about 3.30 p.m. The Village Administrative Officer, who enquired P.W.1, did not write any statement, but prepared a report, which is marked as Ex.P1, and she was sent to Keevalur Police Station along with his menial with Ex.P1 report. The menial accompanied by P.W.1 went to Keevalur Police Station where P.W.7, Head Constable was available. On receipt of Ex.P1 receipt, he registered a case in Crime No.182/96 under sections 302 and 324 IPC. The printed First Information Report Ex.P6, was despatched to the Court.

(b) Mr.Subbiah the Inspector of Police, took up investigation in the case, proceeded to the scene of occurrence and prepared an observation mahazar and prepared a rough sketch. Due to his demise, P.W.13 the Inspector of Police, took up further investigation and went to the scene of occurrence again, and it was found correct. He examined the Inquest Report, Ex.P10 prepared by the said Mr.Subbiah again. A requisition was sent to the Government Hospital along with dead body of the deceased Ramalingam for conduct of autopsy.

(c) P.W.9 the Civil Surgeon, attached to the Government Hospital, Thiruvarur, on receipt of the requisition, conducted autopsy on the dead body and found the following injuries:-

> "(1)Contusion over most of the upper part of scalp with fluctuations present.
>
> (2)Multiple small abrasions with contusion over right side neck.

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(3)Multiple small abrasion with contusion over middle of the right side back."

The Doctor has issued a postmortem certificate Ex.P8 and has opined that the deceased would appear to have died of shock and haemorrhage prior to 24 hours due to injuries sustained.

(d) P.W.1 who was found with injuries, was sent to the hospital. She was given treatment by P.W.8 the Doctor, and the wound certificate is marked as Ex.P7. During investigation, the accused were arrested, and they were also sent for judicial custody. All the material objects were despatched to the Court with a requisition to send them for chemical analysis. Accordingly, they were subjected to chemical analysis. On completion of investigation, the final report was filed by the Investigation Officer.

3. The case was committed to Court of Sessions. Necessary charges were framed against the appellants/ accused.

4. In order to substantiate the charges levelled against the accused, the prosecution examined 13 witnesses and relied on 10 exhibits and 6 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. On the side of defence, D.W.1 was examined and no document was marked on their side.

5. After hearing the arguments advanced by both sides, and on scrutiny of the materials available on record, the trial Court found the accused guilty as per the charge and awarded punishment as referred to above, which is the subject matter of challenge in this appeal.

6. The learned counsel appearing for the appellants inter alia would make the following submissions:

(i) The prosecution has miserably failed to prove that A1 to A4 shared the common intention to cause the death of said Ramalingam, and the prosecution has also not proved the culpability of any one of the accused. In the instant case, according to the prosecution, four persons were eye-witnesses; but, except P.W.1, the other witnesses were not examined.

(ii). So far P.W.1 was concerned, she was not a witness at the time of inquest, and thus, her evidence cannot be given any credence. A perusal of Ex.P1 would clearly reveal that it did not contain necessary particulars to call it as a complaint. Even after Ex.P1 report was placed in the hands of the police, no report of P.W.1 was obtained, and thus, a case came to be registered on the strength of the report of the Village Administrative Officer Ex.P1,

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which is so bald in nature.

(iii). According to the prosecution, the weapons of crime viz., bamboo sticks were recovered from the place of occurrence. It is pertinent to note that A1 is alleged to have attacked the deceased with a bamboo stick of 7½ of length which is humanly impossible in that one could not attack the other with such a weighty stick.

(iv). Though the occurrence has taken place at about 9.30 a.m., the case came to be registered after a long delay, at about 6.45 p.m. which remained unexplained, and there is no evidence to indicate that the appellants shared the common intention. In the absence of the same, the prosecution cannot lay the case against A2 to A4.

(v). In so far as A1 was concerned, even assuming that the case was proved by the prosecution, there is ample evidence to indicate that there was a quarrel between the parties from the morning. Apart from that, Ex.P1 will also indicate that there was a quarrel preceding the occurrence, and under the circumstances, the act of A1, even assuming to be proved, would not attract the penal provisions of section 302 IPC, and hence, all these things have got to be considered by this Court.

7. Heard the learned Additional Public Prosecutor on the above contentions.

8. This Court paid its full attention on the rival submissions made and had a thorough scrutiny of the materials available.

The gist of the case of prosecution as could be seen above, is that on the date of occurrence at about 9.30 a.m. A1 to A4 came to the place of occurrence and attacked the deceased Ramalingam. So far as the common intention is concerned, the Court has to necessarily agree with the contention put forth by the learned counsel for the appellants that there is no material available to indicate that A2 to A4 had any common intention to share with A1. So long as the prosecution is unable to put forth that they shared the common intention, the charge levelled against A2 to A4 cannot be said to be proved.

9.In the instant case, there has been a quarrel between A1 and the deceased from morning in respect of cultivation of six silk cotton trees, and that has culminated in the occurrence. There is no controversy that the father of P.W.1, by name Ramalingam, was taken to the hospital from the scene of occurrence and was declared dead. Following the inquest by the Investigating Officer, the postmortem was also conducted by Dr.Sridharan, who was examined as P.W.9, and the post mortem certificate was also marked as Ex.P8, where from it would be quite evident that the deceased Ramalingam died out of shock and haemorrhage. Apart from that, it is pertinent to point out that the appellants either before the court below at the time of trial or before this Court, questioned the fact that Ramalingam died

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out of homicidal violence. Thus, it could be safely concluded that Ramalingam died out of homicidal violence.

10.In the instant case, P.W.1 was also injured at the time of occurrence. She was also treated by Dr.Vijayanthi, and the wound certificate was also marked, wherein it is stated that she also sustained injuries at the time of the occurrence. No circumstance or reason is brought to the notice of the Court why her evidence has got to be disbelieved. As regards the contention put forth by the learned counsel for the appellants that there were four eyewitnesses, according to the prosecution, and three of them were not examined, the same cannot be a reason to disbelieve the evidence of P.W.1. It is true that she is the daughter of the deceased. Apart from that, her evidence remained uncorroborated. But a careful scrutiny of her evidence would clearly reveal that it is trustworthy and has got to be accepted. Thus, the Court without any difficulty can accept her evidence to the extent that it was A1 who attacked the deceased Ramalingam with bamboo stick on his head and caused the fatal injury.

11.In so far as the second contention that Ex.P1 was only a report, given by Village Administrative Officer and it does not speak about the narration of the incident, and no statement of P.W.1 was obtained by the police before the registration of the case, the court has to necessarily reject the said contention since it does not stand in the way of scrutiny of law. It is true that P.W.1 went to P.W.2, the Village Administrative Officer, and reported the incident. P.W.2 had categorically stated that he did not record her statement, but only wrote her report which is marked as Ex.P1 and sent to the police station along with P.W.1. From the evidence of the Head Constable, who registered the case, it could be seen that he did not get the independent report from P.W.1 before registering the case. Thus it would be quite clear that an independent report was neither obtained by the Village Administrative Officer, P.W.2, or by the Head Constable, who registered the case. But, her statement was recorded by the police officer under section 161 Cr.P.C. A perusal of Ex.P1 report would clearly indicate that on the statement made by P.W.1, P.W.2 has given the said report. The Court is of the considered opinion that Ex.P1 report would be suffice to set the law in motion. Accordingly, it became the basis for registration of the case against the appellants. Thus, that contention has got to be rejected.

12.In so far as the next contention that the recovery M.O.1, bamboo stick, having a length of 7 ½ feet with which one cannot be attacked, the same cannot be countenanced. In the absence of any materials to show that A2 to A4 shared the common intention of A1 in their attack at the time of occurrence, no question of finding them guilty would arise. But, there is suffice evidence to hold that it

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was the act of A1 attacking the deceased with bamboo stick again and caused the fatal injury, resulting in death also. There are materials to indicate that it was the result of a quarrel between the parties. Even in Ex.P1 report by the Village Administrative Officer which came into existence at the instance of P.W.1, it is stated that there was a quarrel between the two families, as a result of which, Ramalingam was killed. It is also seen from the evidence that from the very morning of the occurrence day, a quarrel was going on between the parties which has culminated in the act in question.

13.Under the circumstances, the Court is of the considered opinion that the act of the accused can be brought within the ambit of one culpable homicide not amounting to murder. He is also entitled to exception 4 to Section 300 IPC. At the same time, A1 committed the act with knowledge that it would likely to cause death. Under such circumstances, the court is of the view that the offence committed by the first appellant, would fall within the provisions of Sec.304 (Part II) IPC, and accordingly, awarding punishment of five years rigorous imprisonment would meet the ends of justice.

14.So far as the appellants 2 to 4 are concerned, as the charge levelled against them is not proved, they are not found guilty. Hence, the appellants 2 to 4 are acquitted of the charge. The charge levelled against the first appellant is modified from one under Sec.302 read with 34 I.P.C. to one under section 304 (Part II) IPC as stated above and he is directed to undergo five years rigorous imprisonment. In respect of the charge under Sec.324 I.P.C. levelled against the first accused, this Court is of the view that the conviction and sentence imposed upon him are sustained.

15. Accordingly, the appeal is partly allowed.

16. It is reported that the appellants are on bail. The learned Sessions Judge shall take steps to commit the accused/A1 to prison to undergo the remaining period of sentence. The bail bonds executed by A-2 to A-4, shall stand cancelled.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

bg

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To

1.The Additional Sessions Judge, Nagapattinam
(In duplicate for communication to the Accused No.1)

2. --do-- through the Principal Sessions Judge,Nagapattinam.

3.The Judicial Magistrate,Nagapattinam

4.-do- thro The Chief Judicial Magistrate, Nagapattinam

5. The District Collector, Nagapattinam.

6. The DGP, Chennai

7. The Public Prosecutor, Chennai.

8.The Superintendent of Police,
Central Prison, Tiruchirapalli.

9.The Superintendent of Police,
Special Prison for Women,
Thiruchirappalli.

10.The Inspector of Police,
Keevalur Police Station,
Thiruvarur District.

+1cc to Mr.D. Veerasekaran,Advocate SR.No.27777

PV(CO)
kaa 11.07.

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